IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

MONDAY, THE 19TH MARCH 2007 / 28TH PHALGUNA 1928

WP(C).No. 8668 of 2007(F)

AGAINST THE ORDER IN IA.742/2007 IN
OS.198/2005 of ADDL.M.C.,KOZHIKODE-I

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PETITIONER:

CHAKKERI PREMARAJAN,S/O.SAMI,KOTTOLI
AMSOM DESOM,KOZHIKODE TALUK.

BY ADV. SRI.P.V.KUNHIKRISHNAN

RESPONDENTS: 1

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1. SUBAIDA RAHMAN,W/O.RAHMAN,
SRANTHINTAKAM,PANNIYANKARA AMSOM,DESOM,
KOZHIKODE TALUK.

2. MUHAMMED NOUSHAR,S/O.MUHAMMED,
PULIKKANCHERI,NALLALAM AMSOM DESOM,KOZHIKODE TALUK

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 19/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.P. BALACHANDRAN, J.

W.P.(C)No. 8668 OF 2007

Dated this the 19th day of March, 2007

J U D G M E N T

Petitioner is the 2nd defendant in O.S.198/2005 on the file of the Additional Munsiff's Court, Kozhikode. The suit was filed by the 1st respondent for a decree of mandatory injunction and for other reliefs. On the application of the 1st respondent, a commission was issued to identify the property. That Commissioner submitted a report to the effect that he is unable to identify the property that is Ext.P3 commission report. Thereafter, on the application of the 1st respondent, a fresh commission was issued vide Ext.P4 order and the Commissioner filed Ext. P5 report and plan. Though the said report and plan was prepared with the assistance of a surveyor, the plan does not show the survey number of the property or the diagonal measurements so as to enable the area being calculated. Very serious objections were raised to the commission report challenging the identification of the property as reported by the Commissioner, by the 2nd defendant filing Ext.P6 objection to commissioner's report. The court below vide Ext.P7 order

remitted the report back to the Commissioner with certain limited directions, which obviously will not satisfy the objections raised by the petitioner to the insufficiency and impropriety of the commissioner's report Ext. P5 and hence, this petition. It is further seen from Ext. P7 that for reason of not depositing the batta to the Commissioner and Village Officer to enable the report being remitted to the Commissioner, Ext.P6 application seeking remittance of the report to the commissioner was closed.

2. It is contended before me by the learned counsel for the petitioner that no useful purpose will be served, if the commission report is remitted to ascertain only matters which the court below directed to be examined vide Ext.P7 order. Though notice in this writ petition is not issued to the parties, I am of the view that to avoid delay in disposing of the suit, appropriate direction has to be issued to the court below forthwith without making any observation regarding the merits of the contentions of either of the parties to the suit. On a reading of Ext.P6 objection in I.A. No. 742/2007, wherein, the petitioner prayed for remitting the commissioner's report, I am of the view that commission report has to be remitted back to the

Commissioner to file a proper report and plan with the assistance of surveyor in the light of the objections in Ext. P6.

3. In the result, I set aside Ext.P7 order of the court below and order that Ext. P5 report and plan shall be remitted to the commissioner for furnishing report and plan clarifying the matters pointed out in Ext.P6 and rectifying the mistakes in the plan submitted.

4. As this writ petition is disposed of without notice to the respondents, the court below shall pass appropriate orders remitting the commission report back to the commissioner with due notice to the plaintiffs as well. Petitioner may produce a copy of this judgment before the trial court to enable the trial court to comply with the above directions and pass appropriate orders at the earliest. Issue a copy of the judgment to the counsel for the petitioner on application as per rules, as expeditiously as possible.

K.P. BALACHANDRAN, JUDGE

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KURIAN JOSEPH, J.

O.P.No.16566/1997

J U D G M E N T

7.12.2006